IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 11055 of 2004(N)

PETITIONER:

M/S. JOHN JOSEPH AND CO., AYAVANA,
MUVATTUPUZHA, ERNAKULAM DISTRICT, REPRESENTED BY
ITS MANAGING PARTNER SRI JOHN JOSEPH.

BY ADV. SRI.E.P.GOVINDAN
SRI.A.J.ANTONY

RESPONDENTS:

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1. INTELLIGENCE OFFICER (IB),
COMMERCIAL TAXES, KOTTAYAM.

2. DEPUTY COMMISSIONER, COMMERCIAL TAXES,
KOTTAYAM.

3. COMMISSIONER OF COMMERCIAL TAXES,
GOVT. OF KERALA, TRIVANDRUM.

4. STATE OF KERALA, REPRESENTED BY THE
SECRETARY, TAXES DEPARTMENT, GOVT. SECRETARIAT,
TRIVANDRUM.

BY G.P. SRI.K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF PENALTY ORDER DT.27.9.2001 BY R1.

P2: TRUE COPY OF SHOP INSPECTION REPORT NO.177333 DT.13.7.1994 BY THE SALES TAX INSPECTOR.

P3: TRUE COPY OF REVISION ORDER DT.28.8.2002 IN STRP 100/01 PASSED BY R2.

P4: TRUE COPY OF ORDER DT.4.3.2004 BY R3.

P5: .DO. DT.22.3.2001 OF R3.

P6: TRUE COPY OF PENALTY ORDER DT.18.3.2000 BY R1.

P7: TRUE COPY OF REVISION PETITION FILED BEFORE R3 BY PETITIONER DT.30.4.03.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.11055 of 2004

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Dated this the 20th day of November, 2007.

JUDGMENT

The petitioner is challenging Ext.P1 as confirmed by Ext.P4 order in second revision issued by the Commissioner of Commercial Taxes. Under the impugned orders penalty is levied on the petitioner under Section 45A of the KGST Act for alleged evasion of payment of tax in respect of 17,399 kilograms of rubber. It is seen from the impugned orders that penalty order is based on stock variation detected on inspection by Rubber Board officials. When the inspection was conducted by the Rubber Board on 26.10.1995, the physical stock of rubber found was 300 kilograms as against stock in the book register of 17,699 kilograms. The Rubber Board officials requested the petitioner to explain the shortage. However, petitioner failed to do so which ended up in payment of Rs.3,000/- towards Excise duty. Even though case of stock variation was conceded to the Rubber Board, petitioner contested proposal for penalty on the ground that the findings of the Rubber Board about stock variation are incorrect. The petitioner put up a case that the godown in which stock was maintained was declared to the Sales Tax Department. However, it is seen from Ext.P4 that

the rent deed in respect of the godown is on a stamp paper purchased on 9.1.1997, even though rent agreement was effective from 1.11.1996. Besides this, petitioner's case is that godown was declared before the Sales Tax authorities in 1994 itself. The matter was once remanded by the Commissioner vide Ext.P5 order in second revision and the present orders are issued in remand proceedings after granting further opportunity to the petitioner. Even though counsel submitted that if records are called for, the petitioner's contentions will stand proved, I do not think this court should call for the Rubber Board records pertaining to 12 years back, more so, when petitioner has admitted the shortage before the Rubber Board officials. Therefore, petitioner's case that stock was physically available in the authorised godown and finding of the Rubber Board on inspection and petitioner's admission in this regard are not to be relied upon cannot be accepted. Obviously there was shortage in stock and petitioner could not establish to the contrary in parallel proceedings initiated by the Rubber Board after inspection. Therefore, proceedings initiated for levy of penalty under Section 45A of the KGST Act is based on proper materials and the petitioner's contention that Section 45A proceedings against them is not maintainable is rejected.

2. Even though in principle penalty could be levied against the

petitioner, I find from the assessment orders produced by counsel for the petitioner in court that the Assessing Officer has accepted petitioner's books of accounts and completed the assessment without demanding any tax. Government Pleader contended that the Assessing Officer has not seen the penalty file and that is the reason why accounts were accepted and assessments completed. This may be true because there is no reference in the orders about the penalty proceedings which ended up in levy of penalty on the petitioner. In the circumstances and since physical stock noticed is only shortage and the alleged quantity was recorded in the books of accounts, I modify Ext.P4 by reducing the penalty to rupees fifty thousand. If petitioner has paid the amount pursuant to interim order dated 31.3.2004, then the recovery proceedings initiated for recovery will stand cancelled.

The W.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms